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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte CHRISTOPHER W. BLENK
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13 Appeal 2008-0409
14 Application 09/678,313
15 Technology Center 3600
16

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18 Oral Hearing Held: July, 10, 2008
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22 Before HUBERT C. LORIN, ANTON W. FETTING, and
23 STEVEN D.A. McCARTHY, Administrative Patent Judges
24

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26 ON BEHALF OF THE APPELLANT:
27

28 BRIAN M. BUROKER, ESQUIRE
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34 The above-entitled matter came on for hearing on Thursday, July 10, 2008,
35 commencing at 9:31 a.m., at the U.S. Patent and Trademark Office, 600
36 Dulany Street, Alexandria, Virginia, before Dawn A. Brown, Notary Public.

PROCEEDINGS

JUDGE LORIN: Good morning, counsel. This is Appeal Number
2008-0409. And you are Brian M. Buroker, B-U-R-O-K-E-R?

5 MR. BUROKER: Yes, Your Honor.

6 JUDGE LORIN: Welcome, counselor. We are familiar with the
7 record. When you are ready, you have 20 minutes. And you may proceed.

8 MR. BUROKER: Thank you, Your Honor. I appreciate the
9 opportunity to come here. This case has been pending for just about eight
10 years and this is a sole inventor application, so we've been through a number
11 of rounds with the office and thought we would want to have another set of
12 eyes review the rejections that have been applied.

13 In principle, there are two main points that I wanted to make and
14 make sure the Board understands. We believe there are some significant
15 deficiencies in the primary reference, the Kurzrok reference. That is one
16 series of points.

17 The second point is the deficiency in what we believe to be the
18 combination that is proposed between the Kurzrok reference and secondary
19 reference.

Specifically with Kurzrok, there are a number of deficiencies as it applies to the two independent claims, but I'll focus on Claim 1.

22 First of all, I don't believe there is a disclosure in Kurzrok of only
23 having a portion of a work. The Kurzrok reference describes advertisements
24 in their entirety, and I don't see -- I haven't seen the office cite to a specific
25 portion in that disclosure that says we are only going to receive a portion of
26 the work from an author.

1 Second, the claim recites that the work would be received by the
2 internet. Now, there is certainly disclosure in Kurzrok of having an internet-
3 based connection that allows the readers to have access to the works, but the
4 specific disclosure of how the works get on the website is by, you know,
5 local access, a disk, et cetera. A minor point but yet another difference.

6 Some of the primary differences we point to in the brief and reply
7 brief have to do with the predetermined reader-satisfaction criteria and
8 determining whether or not a reader-satisfaction criteria is met.

9 Now, certainly, Kurzrok has the ability for readers to go on to the site
10 and review the works and give a viewpoint, good, excellent -- a rating -- but
11 there is no predetermined criteria that is then determined whether that work
12 meets.

13 So the examples in our specification, and certainly I know the
14 specification isn't the claims, but there can be a requirement that a 95 percent
15 rating is achieved and the system determines whether that rating is achieved.

16 That is a predetermined criteria, a 95 percent rating. The
17 determination step in Claim 15 and the determination module in Claim 1
18 would need to assess whether or not that predetermined criteria was met for
19 the work.

20 And, of course, then, various dependent claims elaborate on the way
21 at which that might be achieved. For example, having a minimum number
22 of reviewers, a minimum number of reviewers from different demographics,
23 to try to make sure that you've got a good cross-section essentially.

24 Stepping back, this system was conceived as a way to allow
25 independent authors to try to get feedback, and then the system would
26 operate to try to assess the value of a work and then possibly publish it.

1 So the system would benefit by finding new authors that are likely to
2 have successful works, and the authors benefit by having somebody read
3 their work and give them a real assessment instead of the system where they
4 typically just send out lots of works to different publishers.

5 So that was an important part. And then we also think, and I think the
6 examiner agrees, that the Kurzrok reference doesn't disclose the security
7 aspect we're talking about here.

8 One of the concerns by the inventor was if I'm an independent
9 inventor, how much am I going to trust a website to keep my work
10 confidential? Even though I'm only going to give them a portion of the
11 work, maybe it is only a few chapters, that may give somebody a really good
12 idea and they'll take my work elsewhere.

13 So at least within the system there is a time stamp mechanism, and the
14 system has to -- will ensure that if somebody else were to try to resubmit the
15 work to the same site, the time stamp mechanism could be used to verify
16 who was the initial submitter at least to the site. Certainly can't prevent
17 plagiarism all together, but one mechanism. So all these deficiencies
18 we see in the Kurzrok reference and, of course, in many of the dependent
19 claims. There is also no disclosure of, you know, multiple rounds, a lot of
20 the other features in the dependent claims.

21 Now, as it applies to the combination -- when we submitted our brief,
22 the KSR decision had not been decided, so the argument here in the record is
23 based upon our argument that there is no motivation suggested to combine
24 the primary reference with the secondary reference.

25 But I also thought it would be useful to go over the fact that we don't
26 believe that KSR would change our argument.

1 The argument that the examiner makes in trying to modify Kurzrok in
2 view of Teppler seems to me to be somewhat of a circular argument.
3 Teppler certainly discloses a time stamp mechanism for works created on a
4 person's computer.

5 So if I'm a lab scientist, this system would time stamp works when I
6 save them so that if there is ever a dispute -- perhaps even in, like, a patent-
7 interference proceeding when you need to verify when certain dates
8 occurred, that would be useful.

9 Here we're talking about posting to a third-party site and using the
10 time stamp. And the rationale provided is that that would be a useful -- that
11 would be a useful mechanism to use. Well, why?

12 There is no rationale here as to why somebody using the Kurzrok
13 system would feel the need to be concerned about security or feel the need to
14 use a time stamp mechanism. In fact, the Kurzrok reference arguably
15 doesn't seem to care because it is mostly discussing advertisements, which
16 you would think that advertisements you would want to get as widely
17 distributed as possible.

18 So under the KSR analysis, there must be some rationale for the
19 combination. And certainly one rationale could be a motivation suggestion
20 or motivation combined, which we think is not present. But any of the other
21 criteria we also think are missing from the analysis provided by the
22 examiner.

23 So those are the primary points I wanted to highlight. If you have any
24 questions for me, but other than that, those are the points I primarily wanted
25 to make before the Board.

26 JUDGE FETTING: You brought up the issue of the portion. That --

1 it looks like you introduced that argument for the first time in the reply brief.
2 I didn't see that argument in the brief itself.

3 MR. BUROKER: Well, it was argued before in the presentation to
4 the examiner, and I thought it was sort of subsumed within the argument that
5 you're presenting a portion of the work. I highlighted in the reply brief.

6 JUDGE FETTING: Okay. What is it about the mechanism -- Claim 1
7 is a system -- what is it about the system that is going to carve out only a
8 portion? Or is it simply a matter of the person making the submission is
9 submitting only a portion?

10 MR. BUROKER: Well, I think the contemplation in the specification
11 was that the author would be informed to provide only a portion of the
12 overall work.

13 JUDGE FETTING: So that would not affect the structure?

14 MR. BUROKER: Actually, probably not. I don't know how
15 structurally the system could supervise that, I guess.

16 JUDGE FETTING: The examiner at least appears to be making the
17 argument in terms of the criteria. Termination means that there must be
18 some criteria implicit in saying that something is satisfactory or something is
19 excellent or what have you and that that in itself is evidence of satisfaction.
20 Why are you arguing that would not be evidence of satisfaction?

21 MR. BUROKER: I think it is a little bit nuanced. But in my view,
22 the system talks about a predetermined reader-satisfaction criteria. So
23 before the readers review the work, there is something predetermined. What
24 is predetermined in Kurzrok, I don't see it.

25 So the example in the specification is 95 percent approval rating or 95
26 percent likelihood of purchase or something like that. That is a

1 predetermined criteria that the system can then see if they're met.

2 In Kurzrok, if the advertisement is rated good or excellent or

3 whatever, it is just provided to the provider. There is nothing -- it doesn't
4 say you met this criteria. I think it is a little nuanced.

5 My understanding of what we were trying to argue to the examiner
6 was there is some level of criteria and then there is a determination of
7 whether that is met. Our system has two steps and I think Kurzrok is really
8 just one.

9 JUDGE FETTING: Okay. Thank you.

10 JUDGE LORIN: We have no more comments. We'll take your
11 comments under advisement. Thank you, counsel.

12 MR. BUROKER: Thank you, Your Honor.

13 (Whereupon, the proceedings at 9:41 a.m. were concluded.)